IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9367 OF 2004

1.Shri Hafix Ismail Shaikh)
2.Shri Rauf Ismail Shaikh)
Both r/o.Mirchi Galli, Bagwan)
Mohalla, Panvel, Dist.Raigad)
3.Smt. Najma Iqbal Patel)
(Maiden name - NajmaIsmail)
Shaikh) r/o.Digora,Tal.Junner)
Dist. Pune.)
4.Shri Shafiq Rahimu @ Abdul)
Rahman Shaikh)
5.Shri Bashir Rahimu @ Abdul)
Raheman Shaikh)
6.Shri Salim Rahimu @ Abdul)
Raheman Shaikh,)
7.Shri Irfan Rahimu @ Abdul)
Raheman Shaikh)
No.4 to 7 R/o.Mirchi Galli,)
Bagwan Mohalla, Panvel, Dist.)
Raigad.)
8.Smt. Ayesha Gulamgos Shaikh)
R/o.Vaji Mohalla, Panvel,)
Dist. Raigad.)
9.Shri Umer Shaikh Mohammad)
Mestry,R/o.Mirchi Galli,Bagwan)
Mohalla, Panvel, Dist.Raigad)..PETITIONERS

Versus

1.The Special Land Acquisition)
Officer, Metro Centre No.1,)
Panvel, Dist. Raigad.)
2.Shri Yusuf Haji Shaikh)
Mohammad Metry, R/o.Bagwan)
Mohalla, Panvel, Dist.Raigad.)
3.Smt. Khatija Rahimu @ Abdul)
Reheman Shaikh, R/o.Mirchi)
Galli, Bagwan Mohalla, Panvel)
Dist. Raigad.)
4.SmtZubeda Nijam Shaikh,)
R/o.Pabal, Tal. Shirur,Dist.)
Pune.)..RESPONDENTS

Mr. N.V. Bandiwadekar, for the Petitioners
Mr. U.P.Warunjikar, for Respondent No.2.

CORAM: F.I. REBELLO J.
DATE : 7th March,2005

JUDGMENT:

. Rule. Heard forthwith.

2. The case of the petitioners is that they along with respondent NO.2 had filed a reference for enhancement of compensation in respect of the lands of the family which were acquired by the Respondent No.2. On account of the apprehension that the respondent No.2 would appropriate the entire compensation they moved under Order 1 Rule 10 of the C.P.C. to implead them in the land reference. That application has been rejected and consequently the present petition.

3. The lands have been acquired for Twin City Project. On behalf of the petitioners it is contended that the petitioners admittedly are the heirs of the deceased land owner. In the revenue records unfortunately on the death of Shaikh Mahammed Sileman Mestry in 1961 only the name of the Respondent No.2 came to be mentioned by the village authorities as Karta and Manager of joint family. The late Shaikh Mahammed Sileman Mestry had four sons of which Respondent No.2 was one. Though it is the case of the petitioners, who are the other sons or legal heirs of the sons that their name initially had came to be included in the revenue records pursuant to M.E. NO.3945. However, the name of the Respondent No.2 came to be included as Karta. The award came to be made in the name of respondent No.2. The respondent No.2 accepted the amount and distributed the same amongst the heirs. It was decided that the reference for enhancement will be made only by Respondent No.2 as the

Award was made in his name. It is, therefore, submitted that they are persons interested within the meaning of Section 3(d) as also in terms of Section 18(1) and Section 20 of the Act and, therefore, the learned Judge is wrong in rejecting the application for being impleaded as parties to the reference.

4. By the impugned order the learned Civil Judge has placed reliance on various judgments which were cited before him. The learned Judge held that the petitioners herein were persons interested. The learned Judge, however, then placing reliance on Sections 18 and 53 of the Act held that considering Sections 18 and 53 any person interested, can be joined or impleaded as party to the reference in view of Section 53 of the Land Acquisition Act. However, held that as the petitioners herein were having knowledge of the reference when made, but remained silent for 20 years, they had waived their right and after the period of limitation has expired cannot now be joined as parties to the reference as interested persons. The learned Judge was also pleased to hold that the petitioners have abandoned their rights and as such their application is liable to be dismissed.

5. At the time of hearing of this petition on behalf of the petitioners their learned Counsel submits that they are interested persons and once they are persons interested they ought to have been impleaded considering the judgment of the Apex Court in the case

of **Sunderlal v. Paramsukhdas and Ors., AIR 1968 SC 366**. It may also be mentioned that the learned Counsel also relied on unreported judgment of a single Judge of this Court in **Smt. Janabai Pandurang Gurav v. The Special Land Acquisition Officer & Anr., in First Appeal No.1100 of 1997 decided on 6th August, 2004**.

. On the other hand on behalf of the respondents their learned Counsel submits that the proceedings before th Reference Court are arising from a reference under Section 18 of the Land Acquisition Act. Under Section 18 of the Act, it is only the persons who had sought the reference who can proceed with the reference. Considering the scheme of the Act other parties who were before the Land Acquisition Officer and who had filed the objections and/or interested, have to be given notice. It is further submitted that Sections 18 and 30 of the Act, provide for distinct procedure other than what is provided under the C.P.C. and considering Section 53 of the Act, there is no power in the Reference Court to direct amendment of the reference or joinder of parties who had not sought the reference before the Land Acquisition Officer and/or who were not parties or had not filed objections before the S.L.A.O. when the award came to be passed. Reliance is placed on several authorities which will be adverted to in the course of the discussion.

6. With the above we may firstly consider the scheme of the provisions of the Land Acquisition Act to

enable us to find out as to who can be said to be person interested and if so, whether such person interested can be impleaded in the reference made under Section 18. They had neither sought reference nor were they before the Land Acquisition Officer as claimants or objectors to the Award being made or fixation of the compensation. Section 3(b) of the Land Acquisition Act defines the expression "person interested " to include all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

. Section 18 of the Land Acquisition Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested. In other words by virtue of Section 18 a person interested whether as to measurement of the land, the amount of compensation or apportionment can apply under Section 18 provided he satisfies the requirement of sub-section (2) of Section 18, if the S.L.O. makes a reference. The next provision is Section 19. Under Section 19(1)(b) the Collector while making a reference shall state, for the

information of the Court, in writing under his hand the names of the persons whom he has reasons to think interested in such land. Thereafter by virtue of Section 20 a reference Court on reference being made to it may cause notice to be served amongst others on the Applicants and all persons interested in the objection except those have consented without protest to receive payment of the compensation awarded. We then have Section 53 which reads as under:-

> "53. **Code of Civil Procedure to apply to proceedings before Court.-** Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil procedure, 1908(5 of 1908) shall apply to all proceedings before the Court under this Act."

. From a reading of these Sections what appears is firstly that to seek a reference a person must be interested. If the person is interested the Collector while making reference has to include his name and if such name is included the reference Court must give notice to him for the hearing of the reference. It may also appear plausible that if the person is interested yet is not a party in the reference then considering that the provisions of C.P.C. are applicable pursuant to the provisions of Section 53 of the Land Acquisition Act, then the provisions of Order I Rule 10 of the Code of Civil Procedure could be invoked by the person

interested to be added as party to the reference. In the instant case there is no dispute that the Respondent will be interested person as they have interest in the land. The question is whether they are entitled to be joined in the reference proceedings.

7. Considering the above, we may consider the judgment cited on behalf of the respondents to find out whether the issue is open for consideration by this Court or stands concluded in view of the judgments of the Apex Court as also of this Court. Before we proceed further it may be mentioned that apart from Section 18 there is another provision, Section 30, by virtue of which if there be a dispute as to apportionment of the compensation or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. This Section is independent of Section 18 and is a power in the Collector to make a reference if he is not in a position to decide as to apportionment. It is also a power in the Collector if interested persons approach him within reasonable time to make a reference which will be limited to the apportionment awarded. In **Smt. Ambey Devi v. State of Bihar & Anr., AIR 1996 S.C. 1513** the issue before the Apex Court was whether when reference is sought by one of the co-sharers another co-sharer can claim enhancement of compensation without seeking reference under Section 18 of the Land Acquisition Act. In that case one of the co-owners sought for reference to the Civil Court under Section

18 which reference was made. The Court enhanced compensation. Thereafter the other co-owner who had not preferred reference filed an Appeal claiming enhancement of compensation in respect of her land on par with other co-owners. That claim was rejected by the High Court by holding that the Appellant had not made any application under Section 18 after the Award was made by the Collector and as such she was not entitled to enhanced compensation. An Appeal was preferred against that order. An argument was advanced before the Apex Court that considering Section 53 of the C.P.C. the provisions of C.P.C. are applicable and as such Order I Rule 10 of C.P.C. providing for impleadment of all necessary and proper parties, the Appellant being a necessary party to the proceedings, she is entitled to the same compensation as was awarded to the other claimants. The Court rejected the contention by firstly observing as under:-

> "We find no force in the contention. The scheme of the Act is inconsistent with C.P.C. regarding the entitlement to claim compensation under the Act. The C.P.C. provides only the procedural format to adjudicate the dispute. After the award was made under Section 11 the Land Acquisition Officer was required to issue notice under Section 12 to the parties. As contemplated under Section 30 of the Act, the appellant is entitled to receive the compensation either under protest or without

protest. When the compensation is received under protest under sub-section (1) of Section 18 the application in writing has to be made within the limitation prescribed under Section 18(2) to the Land Acquisition Officer objecting to either extent of the land, classification, value of the land or apportionment of the compensation and upon receipt thereof reference to Court would be made. Thereunder the applicant shall be required to state the grounds on which he/she objects to the compensation etc. Valid reference is a pre-condition for the Civil Court to adjudicate the objections raised in the reference application."

Thereafter proceeding further the Apex Court observed as under:-

"The procedure prescribed under Section 18 and 30 is inconsistent with the procedure prescribed under Order 1 Rule 10, C.P.C. Order 1, Rule 10 c.P.C. would apply to implead a necessary or proper party to effectuate complete adjudication of all the disputes having arisen between all the necessary or proper parties who may be bound by the decision. That question dos not arise since inconsistent procedure has been prescribed under the Act. As held earlier, making an

> application under sub-section (1) and within the limitation prescribed under sub-section (2) of Section 18 are conditions precedent for the Land Acquisition Officer to make a reference under Section 18; only on its receipt, under Section 20 Civil Court gets jurisdiction to issue notice and thereafter to conduct enquiry as contemplated under the Act. At that stage, the procedure of trial etc., as contemplated under the C.P.C. would apply and Section 53 of the Act would become applicable."

The Apex Court was then pleased to hold that:-

> "By no stretch of imagination, the application under Section 18(1) by one of the co-sharers would be treated as one made on behalf of all the co-sharers.

. From this judgment it will, therefore, be clear that parties, even may be co-sharers, who had not applied for enhancement, cannot in the absence of they applying for enhancement against their share be entitled to enhancement.

8. We may then refer to the judgment of the Apex Court in the case of **Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. v. Allahabad Vikas Pradhikaran and Anr., AIR 2003 SC 2302**. In that case the compensation was claimed both by the Government and the

lease holders. The Land Acquisition Officer referred the dispute to the Civil Court under Section 30. During the pendency of the reference the Reference Court sent a communication to the S.L.A.O. setting out that on a perusal of the case file, there was an application filed by one Prayag Upnivesh Awas Evam Nirman Sahkari Samiti Ltd. who were appellants and that no mention had been made regarding that application in the letter. The S.L.A.O. sent a reply stating that such an application was also attached and due to error the same was not mentioned in the letter dated 12th October, 1987. On receipt of the letter the Samiti was impleaded and proceeded in the matter as if there is a proper reference under Section 18 of the Act. The Additional District Judge held that 75% of the compensation was to be paid to the Samiti and balance 25% was to be directly to be paid to the State Government. This was challenged by the sponsoring authority on the ground that there was no proper reference under Section 18 of the Act for enhancement of compensation and that the District Judge had no jurisdiction to grant enhancement of compensation. The Appellant did not participate in the acquisition proceedings. The High Court accepted the contention that there was no proper reference and accordingly set aside the order enhancing the compensation. However, did not interfere with the apportionment. Before the Apex Court it was submitted that S.L.A.O. had clarified the matter and as such there was proper reference under Section 18. The question before the

Apex Court was whether the S.L.A.O. had made a reference under Section 18 of the Act. Considering the issue the Apex Court observed that the letter is not sufficient to make it as a reference, purported to be under Section 18 of the Act and that the impleadment of the Samiti and the conversion of the same as a Reference under Section 18 is illegal. The Apex Court noted that the Reference Court gets jurisdiction only if the matter is referred to it under Section 18 or 30 of the Act and the Civil Court has got jurisdiction and authority only to decide the objections referred to it and it cannot widen the scope of its jurisdiction or decide matters which are not referred to it. Reliance was placed in the judgment in the case of Pramatha Nath Mullick Bahadur v. Secretary of State, AIR 1930 PC 84. The Apex Court extracted the following passage with approval:-

> "Their Lordships have no doubt that the jurisdiction of the Courts under this Act is a special one and is strictly limited by the terms of these sections. It only arises when a specific objection has been taken to the Collector's award, and it is confined to a consideration of that objection. Once therefore it is ascertained that the only objection taken is to the amount of compensation, that alone is the "matter" referred, and the Court has no power to determine or consider anything beyond it."

Reference was also made to the judgment in the case of K. Kankarathanamma and Ors. vs.State of Andhra Pradesh & Ors., AIR 1965 SC 304. The Apex Court extracted the following passage:-

> "...the matter goes to the Court only upon a reference made by the Collector. It is only after such a reference is made that the Court is empowered to determine the objections made by a claimant to the award. Section 21 restricts the scope of the proceedings before the Court to consideration of the contentions of the persons affected by the objection. These provisions thus leave no doubt that the jurisdiction of the Court arises solely on the basis of a reference made to it. No doubt, the Land Acquisition Officer has made a reference under S.30 of the Land Acquisition Act but that reference was only in regard to the apportionment of the compensation amongst the various claimants. Such a reference would certainly not invest the Court with the jurisdiction to consider a matter not directly connected with it. This is really not a mere technicality for as pointed out by the Privy Council in Nusserwanje Pestonjee and others v. Meer Mynoodeen Khan Mullud Meer Sudroodeen Khan Babadoor whatever jurisdiction is given by a

statute and such jurisdiction is only given upon certain specified terms contained therein it is a universal principle that those terms should be complied with in order to create and raise the jurisdiction, and if they are not complied with the jurisdiction does not arise. This was, therefore, a case of lack of inherent jurisdiction and the failure of the State to object to the proceedings before the Court on the ground of an absence of reference in so far as the determination of compensation was concerned cannot amount to waiver or acquiescence. Indeed when there is an absence of inherent jurisdiction, the defect cannot be waived nor can be cured by acquiescence. (1855) 6 Moo Ind App 134 at P.155."

9. We may now refer to some judgments of this Court. First such judgment is in the case of **Govind Narayan Lotlikar vs. Savitribai Raghuvira Lotlikar & Ors., 1986 Mh. L.J.844**. The issue before the learned single Judge of this Court was, if a person who was not a party before the Collector, but claims entitlement to compensation is he entitled to be impleaded under Order 1 Rule 10 of the Code of Civil Procedure. The learned Single Judge after considering the matter and the various judgments adverted to held that if a person who was not a party before the Collector is allowed to be impleaded by the District Court in a reference to it the nature of the dispute referred would be

substantially changed for a new dispute incorporating the claim of such a person will be raised. The Court held that this is not possible as the jurisdiction of the Civil Court in the reference under the Land Acquisition Act is restricted to the precise terms of the reference.

. We then have the judgment of another learned Single Judge in the case of **Shri Dattaram Deu Desai & Ors. Vs. Shri Nirakar Devasthan of Palolem through its Attorney & Ors., 2000 (2) Bom.C.R.100.** There once again the issue was arising under Section 30 of the Land Acquisition Act. The issue before the learned Single Judge was whether a person who was not a party to the Land Acquisition proceedings before the Collector, can seek impleadment as a party to the proceedings before the District Court in a reference under Section 30 of the Land Acquisition Act. The learned Judge relied on the judgment in the case of Smt. Ambey Devi (supra). The learned Judge held that only after a reference is made to it, does the Court has jurisdiction to inquire into the matter and for that purpose follow the procedure prescribed under the Code of Civil Procedure, subject to the procedure is not being inconsistent with the provisions of the Act. As the Apex Court has taken a view that the provisions of Order 1 Rule 10 of C.P.C. are inconsistent with the scheme of the Section 18 and 30 the learned Judge held that there can be no impleadment by the reference Court considering that none of the parties had sought a

reference either under Section 18 or Section 30 of the Land Acquisition Act. To the same effect is the judgment of a learned Single Judge of the Allahabad High Court in the case of **Tejdhari & Ors. v. Baul & Ors., AIR 1981 Allahabad 47**.

10. On the other hand on behalf of the petitioners reliance has been placed in the judgment in the case of **Sunderlal (in both the appeals) v. Paramsukhdas & Ors. AIR 1968 SC 366.** A few facts may be set out. One Sunderlal filed an application for reference under Section 18 of the Act claiming enhancement of compensation. Khushal Singh another claimant also applied for a reference. There was a litigation between Sunderlal and Khushal Singh. Sunderlal had filed a suit against Khushal Singh for recovery of rent. There was a reference to the Revenue Court, which answered the reference holding that Khushal Singh was not a protected licensee. In Appeal the order was reversed. That was confirmed by the Bombay Revenue Tribunal. Sunderlal filed a petition before the High Court. That was compromised. By virtue of the compromise it was set out that Khushal Singh did not wish to dispute Sunderlal's contention that the land was leased for horticulture purposes and that he had not acquired the status of a protected lessee. Khushal Singh further stated that he had no objection to the quashing of the orders of the Bombay Revenue Tribunal and of the Deputy Collector. One Paramsukdas filed an Application in the petition claiming to be heard on the

ground that he had obtained a decree against Khushal Singh and had commenced execution proceedings. It was his case that the amount of compensation that was ordered to be paid to Khushal Singh as compensation be attached for the satisfaction of his decree. Further contention was that Khushal Singh and Sunderlal had malafidely entered into an agreement and had filed a compromise application asking for quashing of the orders of the Revenue Courts with the sole object of setting at naught the attachment and execution of his decree. In the meantime it appears that Paramsukhdas withdrew the amount and filed another application setting out that he had withdrawn the amount and that he was interested person and, therefore, should be joined as party. On his behalf Advocate gave an undertaking and in those terms the Civil Application was disposed off. The Court also observed that the parties are free to file compromise terms in the Civil Court where proceedings are pending on reference under Section 18. Paramsukhdas filed applications under Order 22 Rule 10 read with Section 151 of C.P.C. praying that his name be substituted or added as an applicant on the ground that the compromise was fraudulent and that Khushal Singh was abandoning the case and as an attaching creditor he was entitled to be added a party to the case. This was objected to both by Khushal Singh and Sunderlal. The reference Court held that Paramsukhdas as he had not appeared in the land acquisition was not a party interested and could not be one of the persons interested in the objections

under Section 20(b) of the Act. In proceedings before the High Court the High Court took a view that he Paramsukhdas was not claiming any interest in the land, but was claiming interest in the compensation for the land which has been deposited in the Court and as such was a person interested as defined under Section 3(b) of the Act. It was this issue which was before the Apex Court. The Apex Court noted that the person becomes a person interested if he claims an interest in the compensation to the awarded. The Court held that in these circumstances Paramsukhdas was a person interested within Section 3(b) of the Act because he claimed interest in compensation. The Court thereafter observed that before he may be made a party it has to be examined whether he comes within Section 20(b) or Section 21 of the Act. After considering the scheme of the Act the Court observed as under:-

> "A person claiming an interest in compensation would, it seems to us, be a person interested in the objection if the objection is to the amount of compensation or the apportionment of compensation, and if his claim is likely to be affected by the decision on the objection. Section 21 restricts the scope of enquiry to a consideration of the interests of the persons affected by the objection....."

The Court then held that from the above discussion if follows that a person claiming an interest in

compensation is entitled to be heard under Section 20 and 21 of the Act. The Court thereafter observed as under:-

> "If the right to prosecute a reference by a person on whom the title of the person interested has devolved be granted, there is no reason why the right to claim a reference of a dispute about the person entitled to compensation may not be exercised by the person on whom the title has devolved since the date of the award."

From this judgment it is sought to be contended that even if the petitioners were not parties before the collector they can still be added. Firstly, this judgement is clearly distinguishable in the context that the reference was not sought by a person interested in the land, but by a person interested in the compensation. Secondly, the Apex Court had no occasion to consider the effect of Section 53 of the Land Acquisition Act which has subsequently been considered in Smt.Ambey Devi (supra) wherein the Apex Court has taken the view that the procedure prescribed under Sections 18 and 30 is inconsistent with the procedure prescribed under Order 1 Rule 10 of C.P.C. The judgment in Sunderlal (supra) will have to be restricted to the fact of that case where there was a decree holder and a judgment debtor. The judgment debtor being a party to the reference and the decree

holder seeking attachment of the amounts awarded in favour of the party to the reference. Reliance is also placed on an unreported judgment of the learned single Judge of this Court in the case of **Smt.Janabai Pandurang Gurav vs. The Special Land Acquisition Officer & Ors.,in First Appeal No.1106 of 1997 decided on 6th August, 2004.** In that case the appellant was the original claimant in application under Section 18 of the Land Acquisition Act. The reference was made at the behest of the appellant. The Application for reference was disallowed and the amount awarded was directed to be paid to Respondent No.2 Trust. On behalf of the appellant it was submitted that the amount awarded in favour of the appellant could not have been ordered to be paid to the respondent trust as no application for reference has been made under Section 18 and 30 of the Act. On behalf of the Respondents it was submitted that the respondent NO.2 is the owner. The Reference Court had directed that the compensation amount shall be paid to respondent No.2. The issue of joinder of parties was not in issue. What was in issue was whether in a case of reference at the instance of the appellant for enhancement of the compensation and no reference by the respondent for apportionment, whether the District Court could have apportioned or awarded compensation in favour of the respondent. The learned Judge held that the entire approach of the Court was wrong and remanded the matter. Again this judgment is of no assistance considering that it does not deal with the controversy

in issue in the present case.

11. A perusal, therefore, of the authorities and of the provisions would indicate that when a reference is made under Section 18 the Collector under Section 19 has to make a reference. In the reference made the names of the persons whom he has reason to think interested in such land have to be set out. It is in this context that a notice has to be served on such persons under Section 20. Section 20 then provides for a notice to such named parties interested in the objection. This therefore, be referable to Section 19(b) and not to persons whose names had not been referred to pursuant to reference under Section 18 by virtue of Section 19.

12. Section 53 only provides that the provisions of C.P.C. to the extent they are not inconsistent with anything contained in this Act shall apply to the proceedings before a Court. The reference would disclose who are parties before the Court. Therefore, the procedure applicable would be from that stage, as the Apex Court has noted that the provisions of Order 1 Rule 10 are inconsistent with Section 18 and 30 of the Act. Though in the present case the reference was rejected on the ground that there was delay in my opinion for the reasons as now disclosed the ultimate order need not be interfered with.

. In the light of the above Rule discharged.

There shall be no order as to costs. Certified copy

expedited.

(F.I. REBELLO, J.)